

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7075

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID SWIFT,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Russell A. Eliason, Magistrate Judge. (CR-89-235; CA-97-116-2)

Submitted: October 29, 2004

Decided: February 10, 2005

Before WILLIAMS, KING, and GREGORY, Circuit Judges.

Dismissed by unpublished per curiam opinion.

David Swift, Appellant Pro Se. Anna Mills Wagoner, United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

David Swift appeals a magistrate judge's order denying his Fed. R. Civ. P. 60(b) motion seeking reconsideration of the denial of his 28 U.S.C. § 2255 (2000) motion. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2000); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The magistrate judge's order is neither a final order nor an appealable interlocutory or collateral order. United States v. Bryson, 981 F.2d 720, 723 (4th Cir. 1992) (magistrate judge may hear matters in § 2255 proceedings, but may not decide them absent explicit consent). Moreover, where a dispositive matter is referred to the magistrate judge under 28 U.S.C.A. § 636(b) (West Supp. 2004), parties must have the opportunity to object, and the district court is required to conduct de novo review of the portions of the recommendation to which objections are made. Bryson, 981 F.2d at 723. Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED